

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-4461**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SEAN BURT,

Defendant - Appellant.

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Appeal from the United States District Court for the Northern  
District of West Virginia, at Wheeling. Frederick P. Stamp, Jr.,  
District Judge. (CR-02-70)

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Submitted: October 15, 2004

Decided: October 26, 2004

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Before WILKINSON, GREGORY, and SHEDD, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Edmund John Rollo, Morgantown, West Virginia, for Appellant.  
Thomas Edward Johnston, United States Attorney, David J. Perri,  
Assistant United States Attorney, Wheeling, West Virginia, for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Sean Burt seeks to appeal his conviction and sentence. In criminal cases, the defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, the district court may grant an extension of time to file of up to thirty days upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its judgment on April 28, 2003; the ten-day appeal period expired on May 12, 2003. Burt filed his notice of appeal on May 27, 2003, beyond the ten-day period but within the excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remanded the case to the district court to determine whether Burt could demonstrate excusable neglect or good cause warranting an extension of the ten-day appeal period. On remand, the district court found that Burt had not established excusable neglect. We have reviewed the record and conclude the district court did not abuse its discretion in making this determination.

Because the district court declined to extend the appeal period based on excusable neglect, we dismiss the appeal for lack of jurisdiction.\* We dispense with oral argument because the facts

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\*We deny as moot the Government's motion to dismiss the appeal based on Burt's appellate review waiver.

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED